IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 205 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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HAKUBHAI SAHEBJI - Applicant(s)

Versus

THE STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR BD KARIA for Petitioner No(s).: 1.

MR NC SOOD, LD.APP for Respondent No(s).: 1.
None for Respondent No(s).: 2, 3, 5, 6,7.
DELETED for Respondent No(s).: 4.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/08/2005

ORAL JUDGMENT

1. Heard Mr.B.D. Karia, learned counsel appearing for the petitioner and

Mr.N.C.Sood, ld.APP, appearing on behalf of the respondent-State.

2. The present Revision Application is filed by the orig.complainant against the order of acquittal passed by the ld.Additional Sessions Judge, F.T.C. NO.1, Gandhidham-Kutch, whereby the respondent nos.2,3,5,6 and 7 have been acquitted from the charge of offences punishable under Sections 143, 147, 148, 149, 302, 324, 504 and 506(2) of the Indian Penal Code and also under Section 135 of Bombay Police Act. In the incident in question, one Chandaji Kenji Sama (deceased) succumbed to the head injury inflicted with scythe (Dhariya) on the third day of the incident when he was taking treatment after a major surgery performed in the Civil Hospital at Bhuj.

3. The State of Gujarat has not filed any

appeal against the order of acquittal and the crime in question was investigated and ultimately tried as a cross-case and the material witnesses including the complainant were the accused in the cross-case. In the incident in question is a cross-case wherein one Jivaji Kenaji Sama of village Nandesar is the main accused for the offence punishable under Sections 323, 324, 504 and 506(2) of the Indian Penal Code and also under Section 135 of the Bombay Police Act. Because of some land dispute between the two families, it appears that they have met each other at the time of incident and quarreled and during that scuffle one person i.e. Chandaji Kenji Sama, lost life and some of them sustained injuries. The order of acquittal recorded in favour of Jivaji Kenaji Sama, accused of Sessions Case No.5 of 2003, has not been challenged either by

the State or the complainant.

4. Having considered the details discussed by the ld.trial Judge, it emerges that the order is a reasoned order and based on correct appreciation of oral as well as documentary evidence led by the prosecution. Adopting reasons assigned by the ld.Additional Sessions Judge and without entering into the detailed discussion, this Revision Application can be dismissed in limine. However, according to me, some aspects which are emerging from the impugned judgment and order are stated as under, which support the finding of acquittal recorded by the ld.trial Judge :

(i) Medical evidence is rightly appreciated and there is material contradiction in the statement of the

doctor as to external injury who had initially treated Chandaji and the injury seen by the doctor who had performed autopsy. The prosecution has failed in producing documentary evidence as well as oral evidence of the doctor who had treated Chandaji and there is nothing on record to show that the injury initially seen on the head of the injured was sufficient to cause death of a person. It is rightly observed that suppression of relevant documentary as well as oral evidence as to the treatment given to the deceased has resulted into serious prejudice to the accused.

(ii) There are material contradictions in the oral version of the witnesses, who have been examined as eye-

witnesses to the incident and it is rightly held that the prosecution witnesses have tried to put curtain on certain aspects of the incident and they have not unfolded the true story of the incident that had occurred on the spot of incident.

(iii) There is material contradiction as to the discussion of place of incident and it appears that the prosecution witnesses have tried to change the place of incident while describing the entire incident to their convenience as some of them were accused of cross-case.

(iv) There is reasonable doubt as to the genuineness of the contents of the FIR because the report under Section 157 of the Code of Criminal

Procedure, 1973, has not reached to the concerned Court very promptly.

(v) The case of the prosecution should stand on its own leg and even the injured witness has failed in explaining the injury found on the body of the persons accused when it is on record that some of the persons accused had sustained injury in the incident in question itself. The ld.trial Judge has rightly appreciated that the prosecution witnesses are supposed to explain the injury on the body of the person accused, if the same was otherwise visible or bleeding.

(vi) The rivalry between the two families is also one of the factors and while appreciating the evidence of

prosecution witnesses, the animical terms, if, exist then it should be considered as fact relevant while deciding the credibility of the witnesses having animinal feeling.

(vii) The contradiction as to the type of incident becomes very material. At some places it is said that the incident had occurred at 03-00 p.m. and at some places it is said that it occurred between 05-30 p.m. and 06-00 p.m. cannot be said to be either perverse or illegal.

(viii) It is true that the deceased has succumbed to the injuries by a single blow given by the accused. The prosecution has failed in leading cogent evidence to show as to who is the author of that blow.

(ix) There is no element of planned attack in the story unfolded by the prosecution and hence, no accused can be said to be guilty of the offence punishable under Sections 143, 147, 148 and 149 of the Indian Penal Code because the element of forming unlawful assembly is missing.

5. The present Revision Application has to be dealt with as Revision Application filed by the complainant in a case instituted on a police report and while dealing with such a Revision Application, jurisdiction of this Court is limited. Merely because some other view is possible, it would not make this Court entitle to disturb the finding of acquittal recorded.

6. The reasons recorded by the learned Judge

are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of ***Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204***, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in

the present Revision Application and the same is required to be dismissed.

7. In view of above observations and discussion, the present Revision Application is hereby dismissed in limine.

(C.K. Buch, J)

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